

Service Date: June 28, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF Mid-Rivers Telephone)	UTILITY DIVISION
Cooperative Inc.'s Implementation of 1+)	
IntraLATA Dialing Parity)	DOCKET NO. D98.10.227
)	ORDER NO. 6181

FINAL ORDER

INTRODUCTION AND PROCEDURAL BACKGROUND

1. On March 11, 1999, Mid-Rivers Telecommunications Inc. ("Mid-Rivers" or "Company") filed an Application for Approval of its IntraLATA Equal Access Implementation Plan (Plan) with the Montana Public Service Commission (Commission). The Company requests approval of the procedures and process it intends to use to implement 1+ intraLATA dialing parity.

2. Mid-Rivers filed its Plan in response to AT&T Communications of the Mountain States, Inc.'s. (AT&T) issuance of a Bona Fide Request (BFR) to implement intraLATA equal access in Mid-Rivers' service area. Mid-Rivers received AT&T's BFR on October 6, 1998.

3. On October 21, 1999, Mid-Rivers acknowledged receipt of AT&T's BFR; however, it stated that as rural cooperative it is not subject to the Montana Commission's intraLATA equal access rules (ARM 38.5.4101 *et seq.*) because such rules impose substantive requirements on Mid-Rivers. The Company asserted that AT&T's request would be treated as a request for interconnection under § 252(a)(1) of the Act and § 69-3-835, MCA.

4. On December 15, 1999, the Commission waived the requirements at ARM 38.5.4101 through 38.5.4120; voted to treat AT&T's BFR as a request for interconnection pursuant to 47 U.S.C. § 251(b)(3) and § 96-3-834 (2)(b), MCA; and suspended further action on the docket pending a request from either party for arbitration, or an implementation agreement for Commission approval, pursuant to 47 U.S.C. § 252(b) and 252(e)(1), respectively, and corresponding sections of the Montana Code Annotated (See Notice of Commission Action; December 17, 1999, Docket NO. 98.10.227).

5. On March 11, 1999, Mid-Rivers filed its intraLATA equal access Plan with the Montana Commission. Simultaneous with its application, Mid-Rivers filed a motion for partial waiver of certain Commission rules. Accordingly, the Plan calls for the Company to implement using the full 2-PIC carrier selection methodology in its entire service area.

6. On March 23, 1999, the Commission approved Mid-Rivers' carrier notification practices and procedures and required the Company to inform all registered interexchange carriers of its Plan on or before March 24, 1999. The Commission also waived several Commission rules allowing Mid-Rivers to convert to intraLATA dialing parity pursuant to ARM 38.5.4101 *et seq.* in a manner suitable to all the parties involved (See Notice of Commission Action; March 24, 1999, Docket No. 98.10.227).

7. On April 16, 1998, the Commission adopted rules governing local exchange carriers' (LEC) implementation of intraLATA dialing parity in Montana. 1998 Mont. Admin. Reg., No. 7, at 983-1003 (April 16, 1998) (the "dialing parity rules" or "rules"). These rules provide the procedures and requirements for LECs' dialing parity implementation. *See* ARM 38.5.4101 – 38.5.4120.

8. ARM 38.5.4120 requires Mid-Rivers to convert to intraLATA equal access pursuant to a Commission-approved plan and allow interested persons a reasonable opportunity to comment on the Plan. No persons filed formal comments. Mid-Rivers states that its Plan conforms to the Commission's rules at ARM 38.5.4101 *et seq.*

9. Approval of Mid-Rivers' Plan in part was required in order for the Company to meet both the Montana Commissions' dialing parity rules and the deadlines established by the Federal Communications Commissions' March 23, 1999 Order (See *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Order*, CC Docket No. 96-98, adopted March 19, 1999, released March 23, 1999). The Order requires a LEC to convert to intraLATA equal access within thirty (30) days after receiving state commission approval of its plan. However, because the Plan was already being implemented as required by Commission rules, the Montana Commission approved Mid-Rivers' request to maintain the initial conversion date while delaying the effective date until thirty (30) days prior to June 16, 1999—the date of conversion. To that end, the Commission approved Mid-Rivers' Plan in stages with final approval on June 8, 1999 (See Notice Of Commission Action dated March 24 and April 27, 1999, respectively).

10. Following a review of Mid-Rivers' Plan the Commission makes the following findings and conclusions.

FINDINGS OF FACT AND COMMISSION DECISION

11. The Commission established the intraLATA equal access implementation rules “to provide guidelines and procedures for the commission to carry out its duties pursuant to the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).” ARM

38.5.4101, entitled “SCOPE AND PURPOSE OF RULES.” Subsection (2) provides further indication of purpose in adopting the rules:

. . . The commission imposes this subchapter to encourage competitive entry, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers while ensuring that the rates charged and services rendered by telecommunications services providers are just and reasonable.

The rules were adopted after giving opportunity to comment to all interested persons. They reflect a careful, reasoned consideration of all comments received, both in response to AT&T’s original petition for the rulemaking and in response to later formal rulemaking inquiries. They were adopted specifically for implementing intraLATA equal access in Montana.

12. ARM 38.5.4120(1) states that ILECs “shall file their toll dialing parity plans carrying out the intraLATA equal access presubscription implementation rules set forth in ARM 38.5.4101 through 38.5.4116.” ARM 38.5.4120(1) also provides that interested persons who wish to comment on a LEC’s toll dialing parity plan shall have a reasonable opportunity to do so.

13. ARM 38.5.4120 provides that Mid-Rivers’ Plan must describe how ARM 38.5.4101 through 38.5.4116 will be carried out and include information addressing the following:

- (a) detailed information explaining how and when carriers will be notified of the implementation schedule;
- (b) the language to be used in, and the manner of distribution of, the customer notification letter;
- (c) a description of Mid-Rivers’ anticipated cost of implementation, including Mid-Rivers’ specific implementation costs, the vehicle that Mid-Rivers intends to use to recover implementation costs, and the cost recovery time frame; and
- (d) a description of Mid-Rivers’ proposed business office practices and sample scripts that demonstrate how its business office personnel will handle customer-initiated business office contacts with Mid-Rivers in its role as a local exchange provider in a competitively neutral manner following implementation.

14. This order does not define terms relating to dialing parity or equal access presubscription; these and other terms are defined in ARM 38.5.4102. We address the general subtopics of intraLATA equal access implementation with respect to Mid-Rivers' Plan below:

A. Implementation Schedule

15. Mid-Rivers will begin offering intraLATA dialing parity in all of its 31 exchanges by June 16, 1999, which coincides with its carrier monthly billing cycle. Conversion to equal access will be via the full 2-PIC carrier selection methodology as required by ARM 38.5.4103(2). 2-PIC allows an end user to select an intraLATA/intrastate carrier and the same or different carrier for their interLATA/interstate toll calling. Existing customers who do not select an intraLATA toll carrier will remain with their current intraLATA carrier until the customer selects an alternate carrier. New customers who do not select an intraLATA carrier will be required to dial a carrier access code (e.g., 10-1XXXX) to place intraLATA toll calls. IntraLATA equal access will be offered to residential and business customers as well as public access service providers.

B. Carrier Notification Procedures, Customer Lists and Letters of Authorization

16. *Carrier notification:* ARM 38.5.4120(3) requires that Mid-Rivers provide notice to all registered interexchange carriers no less than 120 days prior to the actual implementation date. The notice must include the implementation schedule, terms and conditions of participation and ordering procedures. The rule further provides that all carriers wishing to participate in presubscription must respond to Mid-Rivers within 30 days of receipt of the participation form. Mid-Rivers may only allow registered telecommunications providers to participate.

17. The Company attached its proposed Carrier Participation Notice as Exhibit A to its Plan. The notice informs carriers who wish to participate in Mid-Rivers' Plan to return the "IntraLATA Equal Access Participating Carrier" form to the Company within 30 days after receiving such notice.

18. Mid-Rivers states it will acknowledge all IXC requests to participate within 5 business days of receipt of the request. The acknowledgement provision was added as the result of previous Commission decisions beginning with US West's implementation plan (See D98.4.86, Order 6063a).

19. The Commission will not require Mid-Rivers to notify all carriers by U.S. Mail. The Commission has established a "ListServe" which allows a LEC to notice IXCs of its Plan via the use of electronic mail. At Mid-Rivers' option, this procedure was used in lieu of regular mail. The ListServe includes the email addresses of all interexchange carriers registered in Montana. For those carriers not able to be notified electronically, Mid-Rivers will send the notice via US mail.

20. On April 20, 1999, the Commission waived ARM 38.5.4103(2)(a) allowing Mid-Rivers to inform all registered IXCs in less than the required 120 days prior to conversion. Such waiver was requested because Mid-Rivers' Plan was filed after the expiration of this deadline.

21. Mid-Rivers' proposal for carrier notification was approved with these modifications (See D98.10.233, Notice of Commission Action dated April 27, 1999).

22. *Customer lists:* ARM 38.5.4105(2) requires Mid-Rivers "not more than 45 days after receipt of a bona fide request for implementation of intraLATA equal access, if no waiver has been sought... make available to all registered carriers that intend to offer intraLATA equal access presubscription a complete list, upon request, which may be provided electronically, of

the primary toll carrier's customers by name, address and phone number." Mid-Rivers will charge \$0.10 per customer record, which the company believes is at or below cost. However, it did not supply the Commission with a cost analysis demonstrating its claim, because, the Company asserts, that it is economically burdensome to verify the cost. Therefore, the Commission waived ARM 38.5.4105(2) that requires that the list be cost based and non-discriminatory. Mid-Rivers will charge the same rate for the list to each requesting IXC pursuant to this rule.

23. Mid-Rivers delayed the filing of its Plan pending a decision whether or not the Public Service Commission has jurisdiction over the implementation of Mid-Rivers' 1+ intraLATA equal access Plan. This issue was never resolved. Because the jurisdictional question delayed implementation, Mid-Rivers did not make available a list of its customers within the required 45 days after receipt of a bona fide request (BFR). Therefore, on April 20, 1999, ARM 38.5.4105(2) was waived allowing Mid-Rivers to make available such list seventy-five days after receipt of a BFR (See Notice of Commission Action; April 27, 1999, Docket No. 98.10.227).

24. *PIC Change Requests:* ARM 38.5.4116(1)(e) requires the implementing LEC to accept Letters of Authorization or Agency (LOAs) no earlier than 60 days prior to conversion. The Company began accepting LOAs from carriers on February 15, 1999. Mid-Rivers will only process these LOAs that conform to ARM 38.5.3801 through 38.5.3810, the Commission's slamming rules adopted in Docket No. L-99.1.1-RUL, and § 69-3-1304, MCA. Further, the Commission required Mid-Rivers to begin taking requests from customers simultaneous with requests from interexchange carriers. In the case of multiple LOA submissions, Mid-Rivers will process the last date LOA.

25. *PIC Waivers:* ARM 38.5.4111 requires the implementing LEC waive a customers initial intraLATA PIC selection for a period of 90 days following conversion to equal access. Additionally, per Commission decision in D98.4.86, new customers who commence local exchange service from the implementing LEC will have 30 days after new service is installed to select an intraLATA carrier free of charge (See *In the Matter of US West Communications Implementation of 1+ intraLATA dialing parity*, D98.4.86, Order, 6063a). Subsequent PIC selections will be charged the same rate as those imposed for changing interLATA carriers. In case where a customer selects an interLATA and intraLATA carrier simultaneously, the LEC will charge a single PIC change charge. Mid-Rivers will comply with the requirements of 38.5.4111.

C. Customer Notification, Education, and Safeguards

26. Customer notification is addressed in several of the Commission's rules. ARM 38.5.4120(1)(b) requires a LEC's plan to describe how notification to end users will be carried out, the language the LEC will use in its customer notification letter and describe the manner of distribution of such letter.

27. Customer education and presubscription procedures are also set forth in ARM 38.5.4105(4). This rule requires all informational materials, forms and scripts to be "complete, clear and unbiased" and requires the local exchange carrier to promptly make any changes to the materials required by the Commission before using them. Further, at least 30 days prior to its scheduled implementation date, a LEC must provide written information to its customers that describes intraLATA dialing parity and explains presubscription procedures. Information provided pursuant to ARM 38.5.4104 will also inform customers with existing interLATA PIC freezes on their accounts that their freeze will extend to their existing intraLATA toll carrier—in

this case, Mid-River's Long Distance—until the end users take action to change it. Mid-Rivers' customer notification letter and the process it used to inform customers complies with ARM 38.5.4105 and was approved by the Commission on April 20, 1999 (See Notice of Commission Action; April 27, 1999, Docket No. 98.10.227).

28. *Existing customer notification:* ARM 38.5.4104(1) requires the LEC to provide its existing customers at least thirty (30) days prior to equal access conversion a description of intraLATA dialing parity and an explanation of presubscription procedures. Mid-Rivers attached as Exhibit C its proposed format to notify customers. Notification was sent prior to May 17, 1999. The rule also requires the LEC to provide a copy of written notification to customers who subscribe to local service after the May 17, 1999 mailing, but prior to the June 16, 1999 conversion date. The notice will notify customers that they will remain with their current intraLATA carrier until they affirmatively choose otherwise and that the notice must state that existing interLATA PIC freezes will be extended to the customers intraLATA account at the time of conversion. Mid-Rivers' notification procedures and practices for existing customers are consistent with Commission rule.

29. *New customer notification:* Mid-Rivers will provide information to new customers who commence local service after presubscription is implemented about their carrier selection options. At the time service is taken, customers will be asked to select both their primary interLATA and intraLATA carriers. If no carrier is selected, the customer will be designated as a "no PIC" customer and be required to dial carrier access codes to complete intraLATA toll calls. Per the Commissions' decision in D98.4.86, Mid-Rivers will waive the intraLATA PIC charge for new connects for a period not less than 30 days after local service is installed. Subsequent changes will be assessed a rate equal to changing an interLATA carrier.

30. The Company attached to the customer notice a list of IXC's customers will be able to select to carry their intraLATA toll traffic. This is consistent with past Commission decisions. Mid-Rivers' process and procedures to notify new customers of dialing parity and their carrier selection options complies with Commission rule and were adopted on April 20, 1999 (See Notice of Commission Action; April 27, 1999, Docket No. 98.10.227).

31. *Customer safeguards:* ARM 38.5.4116 provides safeguards that apply to the business office practices LECs will use when they implement intraLATA equal access. It further provides that all customers who have an interLATA PIC freeze on their account will have that PIC freeze placed on their intraLATA service as well. Mid-Rivers will follow Montana statutes and administrative rules with regard to "slamming" and obtaining the required authorizations for PIC changes.

32. Mid-Rivers' Plan provides that a list of all participating registered interexchange carriers who have responded during the 30-day period following Mid-Rivers' carrier notice and their toll free telephone numbers will be attached to the customer notification. The notification provides procedures for changing from the present intraLATA carrier. Mid-Rivers' notice to end users contains sufficient information to educate customers on intraLATA dialing parity and procedures for requesting a PIC change. The Commission approved the notice on April 20, 1999 (See Notice of Commission Action; April 27, 1999, Docket No. 98.10.227).

33. *Business office practices:* ARM 38.5.4116 provides for safeguards to ensure that the development of intraLATA competition will not be impeded by LEC practices following equal access presubscription. Subsection 4116(1)(a) requires customer information and procedures used to provide new connects information about their carrier selection options be competitively neutral and approved by the Commission prior to their use.

34. Mid-Rivers will inform new local exchange end users of their right to select the intraLATA carrier of their choice and, if they make no choice, they will be required to dial carrier access codes to place these calls. New and existing customers may communicate their choice of carriers directly for either interLATA or intraLATA toll to Mid-Rivers through their local business office or they may do so indirectly through their selected IXC(s).

35. For all customer-initiated contacts regarding local service matters, ARM 38.5.4116(1)(b) includes important safeguards. It provides, “When handling customer-initiated contacts regarding local service matters such as a change in service, [LEC] business office personnel may not engage in promotional efforts for the local exchange carrier’s toll service offerings.” Subsection (1)(c) further provides that when a customer contacts a LEC’s business office to change the PIC from the LEC to a competitor, “the transaction must be handled in a neutral manner (i.e., in the same manner as a PIC change from one competitor to another).”

36. Mid-Rivers will handle all customer initiated intraLATA PIC change requests in a neutral and unbiased manner. A list of participating carriers names and phone numbers will be provided by Mid-Rivers to the customer in random order. The names on the list will be scrambled on a weekly basis to maintain neutrality. Further, many of the Commission’s previously expressed concerns about contact handling by local exchange carriers that provide intraLATA toll service apply to Mid-Rivers because intraLATA toll is provided by an affiliate, Mid-rivers Long Distance. Therefore, the Commission imposes some restrictions on customer-initiated contacts to Mid-Rivers’ business office. This is discussed in more detail below.

37. ARM 38.5.4104(4) requires Mid-Rivers to provide the proposed script(s) to the Commission for review as part of its implementation Plan. By rule, Mid-Rivers is required to submit the scripts its customer service representatives will refer to and will be trained to use to

discuss intraLATA dialing parity for new service requests and customer contacts for changes in service other than “general service” contacts.

38. Mid-Rivers submitted the following script:

You may choose the long distance company you would like to handle your long distance calls in Montana. If you do not wish to make a selection at this time, you will have to dial a specific company’s access code in order to make an in-state long distance call. Mid-Rivers has a list of companies offering in-state long distance in our service territory. If you would like, I can read that list to you.

Mid-Rivers’ script is sufficient to advise customers of their choices for intraLATA carriers and is competitively neutral as required by Commission rule.

39. The Commission recognizes that a script will not be appropriate for all calls.

Some contacts will require that Mid-Rivers’ representatives adapt their conversation based on individual circumstances. The script provides the necessary information, however, and as long as the representative conveys the information provided for in the script, such deviations are acceptable.

40. The Commission has imposed marketing restrictions for local exchange carriers who provide intraLATA toll. Mid-Rivers Long Distance, an affiliate of Mid-Rivers, provides intraLATA toll to Mid-River end users. Therefore, reasonable LEC restrictions related to the marketing of customer-initiated calls to Mid-Rivers’ business office apply. The Commission continues to conclude that it is reasonable to prohibit Mid-Rivers from initiating marketing and promotional activities for Mid-Rivers Long Distances’ intraLATA toll services on contacts for new service, transfers of service and number changes.

D. Costs Recovery

41. Mid-Rivers claims it will incur incremental costs to implement intraLATA dialing parity which include the following: (1) network hardware upgrades to provide full 2-PIC

methodology in all exchanges; (2) Mid-Rivers office software upgrades necessary for intraLATA presubscription; (3) software translations; (4) billing systems testing and table modifications; (5) personnel training; (6) customer notification; and (7) implementation activity, including consulting and regulatory costs. These costs are all recoverable pursuant to ARM 38.5.4115.

42. ARM 38.5.4120 requires Mid-Rivers to describe the anticipated cost of implementation, including its specific intraLATA presubscription costs, the vehicle that it intends to use to recover them, and the time frame for recovery. Mid-Rivers states that it has not defined the incremental costs of implementation and that it believes the consultant and regulatory cost to determine a surcharge is uneconomical. Therefore, Mid-Rivers does not seek additional originating access fees to recover such costs, provided the regulatory process does not become burdensome and Mid-Rivers does not incur substantial unanticipated costs.

43. The Commission waived ARM 38.5.4115 and did not require Mid-Rivers to provide a cost analysis demonstrating its cost to implement dialing parity. The Commission is satisfied with Mid-Rivers' proposal to forego recovery. The public interest is best served by waiving the requirement for cost information for Mid-Rivers. If Mid-Rivers incurs substantial unanticipated costs to implement dialing parity and files additional materials to support a surcharge, the Commission will address cost recovery at that time.

CONCLUSIONS OF LAW

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. Mid-Rivers is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and

manner of all investigations and hearings of public utilities and other parties before it.

Section 69-3-103, MCA.

3. The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

4. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

ORDER

THEREFORE, based on the foregoing, IT IS ORDERED that Mid-Rivers' intraLATA dialing parity implementation Plan is approved as discussed herein.

DONE AND DATED this 1st day of June 1999, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.